United States Court of Appeals

for the

District of Columbia Circuit

TRANSCRIPT OF RECORD

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In the

UNITED STATES COURT OF APPEALS

For the District of Columbia Circuit

No. 24288

UNITED STATES OF AMERICA

V.

WILLIAM H. THOMAS
Appellant

Appeal from the United States District Court

For the District of Columbia

BRIEF FOR APPELLANT

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Wong Sun v. U.S. 371 U.S. 471

Scott v. U.S. 98 U.S. App. D.C. 105
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* Case chiefly relied on.

In the

UNITED STATES COURT OF APPEALS

For the District of Columbia

No. 24288

UNITED STATES OF AMERICA

V.

WILLIAM H. THOMAS,
Appellant

Appeal from the United States District Court

For the District of Columbia

STATEMENT OF THE ISSUE PRESENTED FOR REVIEW

Whether the court below erred in denying appellant's motion for a judgment of acquittal.

This case has not previously been before this court.

REFERENCE TO RULING

Denial of appellants' motion for judgment of acquittal (Reporter's Transcript pages 127 thru 130); Judge Aubrey Robinson, February 17, 1970.

STATEMENT OF THE CASE

Appellant Thomas, Gardell Edmonds, and Robert Williams were jointly charged with purse-snatch robbery. The robbery took place shortly after 1:00 P.M. on July 6, 1969.

The complaining witness, Agnes O'Neil, was walking alone on the sidewalk when her purse was snatched from her hand by a man who ran up behind her then made his escape down an alley. Miss O'Neil turned and saw two men standing a few feet away; they told her that they would try to catch the robber, and they too ran down the alley. Within a few minutes, two of the men were observed walking a few blocks away, followed by the third man, who was walking not far behind them. The police then arrived, the three were searched, and the purse was found under the police car.

The government presented witnesses in addition to Miss O'Neil. All of the government's identification evidence was in terms of the clothing worn by the robber. While there was some conflict in this identification, the government adopted the view that the evidence pointed to Edmonds as the robber (Tr 125). The Court was of the opinion that the identification was not that clear, but that there were only three people involved (Tr 127 at bottom) who entered the alley and were thereafter arrested together a few blocks away.

The arresting officer, Officer Rand, testified that when he arrived where the three men were walking, Edmonds, who was carrying a sweater, came over to his car, and that Thomas and Williams walked away until he told them to come back, at which point they both walked back to his vehicle.

The defendants' motions for judgment of acquittal were denied, the case was submitted to the jury with instructions on aiding and abetting and flight, and all three defendants were found guilty.

ARGUMENT

Appellant Thomas contends that from the evidence presented to it, the jury must have concluded that Edmonds was the robber. The testimony of the government's witnesses Richardson, Vasko and Rand was clearly to this effect.

Mr. Richardson testified that from a nearby rooftop he saw the men go through the alley and that the first man, who was alone, removed his sweater and wrapped the purse in it. (Tr 45).

Mr. Vasko testified that he saw the man with the sweater kick the purse under the police car. (Tr 97).

Officer Rand testified that Edmonds was carrying a bundle wrapped in a sweater. (Tr 106).

The conviction of Thomas must have rested therefore on the jury's finding that he aided and abetted Edmonds.

On this score, the jury had the following evidence to consider:

1. Miss O'Neil testified that only one man pulled the purse from her hand (Tr 13); that just prior to this she heard the sound of running, but that it was the sound of only one person running (Tr 22, Tr 38); that she never saw all three of the men together (Tr 28); and that after her purse was taken, the other two men stood where she saw them and they did not run until after they had spoken to her (Tr 17).

2. Mr. Vasko testified that when he observed the three a few blocks from the scene of the robbery, two were walking together and one, carrying a sweater, was walking behind them, and that there was whispering between the two in front and the one behind. (Tr 87, Tr 91).

3. Mr. Richardson testified that he observed the men walking, as Mr. Vasko described, but that there was no whispering between them. (Tr 71-72).

4. Officer Rand testified that Thomas had a ten dollar bill in his pocket, and that when he arrived where the men were walking, Thomas had started to walk away but had returned when the officer told him to do so. (Tr 115, Tr 108)

Appellant submits that his conviction must stand, if at all, on the premise that he aided and abetted the robber, for the record is barren of proof that he was an active perpetrator of the offense.

" The true rule *** is that a trial judge, in passing upon a motion for a directed verdict of acquittal, must determine whether, upon the evidence, giving full play to the right of the jury to determine credibility, weigh the evidence, and draw justifiable inferences of fact, a reasonable mind might fairly conclude guilt beyond a reasonable doubt. Curley v. U.S. 81 U.S. App. D.C. 389, 160 F2d 229, cert. denied 331 U.S. 837.

For this purpose, the judge "must assume the truth of the government's evidence and give the government the benefit of all legitimate inferences to be drawn therefrom." (id.)

What was appellant's conduct as portrayed in the view most favorable to the government ? It amounted to presence at the scene of the crime, slight subsequent association with the actual perpetrator, possession of a ten dollar bill, and flight (if walking away upon the arrival of Officer Rand can be considered flight by any standard).

In a similar fact situation in Bailey v. U.S. 416 F2d 1110, the Court said: "Appellant's conduct, as portrayed in the view most favorable to the Government, amounted to presence at the scene of the crime, slight prior association with the actual perpetrator, and subsequent flight. A sine qua non of aiding and abetting

however, is guilty participation by the accused. 'In order to aid and abet another to commit a crime it is necessary that a defendant in some sort associate himself with the venture, that he participate in it as in something that he wishes to bring about, that he seek by his action to make it succeed.'(Nye & Nissen v. U.S. 336 U.S. at 619, 69 S.Ct 766, 93 L Ed 919 (1949). The crucial inquiries in this case relate to the legal capabilities of the evidence to sustain a jury determination that appellant collaborated to that degree in the robbery.

An inference of criminal participation cannot be drawn merely from presence, a culpable purpose is essential. "

In Hicks v. U.S., 150 U.S. at 449-451, the Court stated: "Presence is equated to aiding and abetting when it is shown that it designedly encourages the perpetrator (or) facilitates the unlawful deed --- as when the accused acts as a lookout -- or where it stimulates others to render assistance to the criminal act. But presence without these or similar attributes is insufficient to identify the accused as a party to the criminality."

On the matter of flight, it has been said that "it is a matter of common knowledge that men who are entirely innocent do sometimes fly from the scene of a crime through fear of being apprehended as the guilty parties, or from

an unwillingness to appear as witnesses." Wong Sun v. U.S. 371 U.S. 471 (1963).

It may very well be that the congereies of facts about Thomas in this matter would lead to suspicion concerning his role, but "the circumstances may arouse suspicions, but even grave suspicion is not enough." Scott v. U.S. 98 U.S. App. D.C. 105, 107, 232 F2d 362 (1956).

CONCLUSION

This matter should be remanded to the Court below with directions to dismiss as to appellant.

Respectfully submitted,

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OTHER REFERENCES

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* Cases chiefly relied upon are marked by asterisks.

ISSUE PRESENTED *

In the opinion of appellee, the following issue is presented:

Whether the evidence against appellant was sufficient to support his conviction for robbery as an aider and abettor.

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* This case has not previously been before this Court.

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 24,288

UNITED STATES OF AMERICA, APPELLEE

v.

WILLIAM H. THOMAS, APPELLANT

Appeal from the United States District Court for the District of Columbia

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BRIEF FOR APPELLEE

COUNTERSTATEMENT OF THE CASE

Appellant and two others, Gardell Edmonds and Robert Williams, were charged in a one-count indictment filed August 27, 1969, with robbery in violation of 22 D.C. Code § 2901. After a trial by jury before the Honorable Aubrey E. Robinson, Jr., on February 16 and 17, 1970, appellant and his two co-defendants were found guilty. On April 22, 1970, appellant was sentenced to a term of imprisonment for two to six years. This appeal ensued.[1]

[1] Edmonds and Williams did not appeal from their convictions.

On July 6, 1969, at approximately 1:00 p.m., Miss Agnes O'Neil was returning home from church via Mount Pleasant and Lamont Streets, N.W., when she heard footsteps of a person running behind her (Tr. 12-13). As she turned around, she saw someone approach her, grab her purse from her hand, and flee down the alleyway where the back entrance to her apartment building was located (Tr. 13-14). Standing one foot behind the robber were two men (Tr. 22) who immediately offered to recover the purse for her and proceeded to run down the alley (Tr. 17, 31). Although she was unable to identify any of the individuals, she stated that the robber and one of the two other persons wore white T-shirts and dark pants (Tr. 17). Approximately twenty-five minutes later her handbag was recovered by the police, but a wallet containing a single ten-dollar bill and some change was missing (Tr. 19).

Mr. Van Richardson was at the swimming pool on the roof of his apartment building, located alongside the alleyway, when he heard a woman screaming and looked to see what was happening (Tr. 39-42). He saw a young man wearing dark trousers and a green and black striped sweater (Tr. 48) run through the alley, place what "appeared to be a woman's pocketbook" (Tr. 43) into a trash can, then walk across 16th Street and east on Park Road (Tr. 45). The same person returned within moments, removed the bag from the trash container and placed his sweater over it (Tr. 45). At the same time two other men, one of whom was wearing a white T-shirt and dark trousers (Tr. 51), came into the alley from Lamont Street (Tr. 46) and walked approximately four feet ahead of the man holding the bag (Tr. 76). Then all three proceeded in the same manner north on 16th Street, N.W. (Tr. 50). Richardson immediately informed the lifeguard at the swimming pool (Tr. 48), who in turn called the resident manager (Tr. 85).

Mr. Carlos Vasko, the resident manager, upon receiving the call from the lifeguard summoned the police (Tr. 84). From his window he could see two men walk-

ing approximately two feet ahead of another man holding a sweater on his arm, headed in the direction of 16th Street (Tr. 85, 87). He followed them onto Monroe Street and saw one of the men in front turn to the one holding the sweater and speak to him (Tr. 88, 91). Mr. Vasko was soon joined by Mr. Richardson, who identified the three individuals as the same ones he seen from the roof (Tr. 89).

Officer Charles Rand had received a radio run for a purse snatching and was proceeding to the scene of the theft when he observed the three defendants (who fit the dispatcher's description of the robbers) walking in his direction (Tr. 105-106). Almost simultaneously he was waved to a halt by Mr. Vasko, who pointed at the defendants and asked him to stop them (Tr. 106). The officer requested the three persons to come over to his scout car. The one who was "carrying a bundle wrapped in a sweater"—later identified as Gardell Edmonds—complied, and as he approached, the officer saw him drop something from under the sweater (Tr. 107-108).[2] Williams similarly complied with the officer's request, but appellant continued to walk across the street until he was ordered to stop (Tr. 108). After placing them under arrest, the officer searched them and found a single ten-dollar bill on appellant. No money was found on the other two persons (Tr. 115).

After appellant's motion for judgment of acquittal was heard and denied (Tr. 123-130), appellant rested without presenting any evidence (Tr. 154).

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[2] This object was later retrieved from under the scout car and was identified as Miss O'Neil's pocketbook (Tr. 109).

ARGUMENT

The evidence of appellant's guilt, though circumstantial, was sufficient to show beyond a reasonable doubt that he was an aider and abettor to the robbery.

(Tr. 12-19, 31, 39-51, 76-91, 105-115)

One who knowingly participates in the commission of a criminal act thereby aids and abets the principal and is equally liable. 22 D.C. Code § 105; *see Nye & Nissen* v. *United States*, 336 U.S. 613, 619 (1949). The essential elements necessary to establish aiding and abetting are (1) that an offense was committed by someone; (2) that the accused assisted or participated in its commission; and (3) that he did so with guilty knowledge. *United States* v. *Lumpkin*, D.C. Cir. No. 24,410, decided June 21, 1971, slip op. at 10; *United States* v. *Harris*, 140 U.S. App. D.C. 270, 284 n.40, 435 F.2d 74, 88 n.40 (1970). Guilty participation may be inferred from presence at the scene of the offense coupled with an intent to assist. *Bailey* v. *United States*, 135 U.S. App. D.C. 95, 98-99, 416 F.2d 1110, 1113-1114 (1969). Intent may be proved by the attending circumstances, and therefore one may be guilty of aiding and abetting although he did not physically assist the principal in the actual perpetration of the crime. *United States* v. *Harris*, *supra*, 140 U.S. App. D.C. at 285, 435 F.2d at 89; *Thompson* v. *United States*, 132 U.S. App. D.C. 38, 405 F.2d 1106 (1968); *Long* v. *United States*, 124 U.S. App. D.C. 14, 360 F.2d 829 (1966).

In ruling on a motion for judgment of acquittal the trial court must view the evidence in the light most favorable to the Government, "giving full play to the right of the jury to determine credibility, weigh the evidence and draw justifiable inferences of fact." *Curley* v. *United States*, 81 U.S. App. D.C. 389, 392, 160 F.2d 229, 232, *cert. denied*, 381 U.S. 837 (1947); *see Crawford* v. *United States*, 126 U.S. App. D.C. 156, 375 F.2d 332 (1967). Thus "it is only when there is no evidence

upon which a reasonable mind might fairly conclude guilt beyond a reasonable doubt that the judge may properly take the case from the jury." *United States* v. *Lumpkin, supra,* slip op. at 11; *Johnson* v. *United States,* 138 U.S. App. D.C. 174, 176, 426 F.2d 651, 653 (1970) *(en banc), cert. dismissed as improvidently granted,* 401 U.S. 846 (1971). Moreover, in applying this standard the law makes no distinction between circumstantial evidence and direct evidence. *Holland* v. *United States,* 348 U.S. 121, 139-140 (1954); *Hunt* v. *United States,* 115 U.S. App. D.C. 1, 3, 316 F.2d 652, 654 (1963). *See also Anderson* v. *United States,* 406 F.2d 529, 532 (8th Cir. 1969), in which Judge Blackmun, writing for the court, pointed out that guilty knowledge, being incapable of direct proof, must always be established by circumstantial evidence.

Viewed in the light most favorable to the Government, the evidence in the case at bar, although circumstantial, showed (1) that Gardell Edmonds had snatched Miss O'Neil's purse; (2) that appellant was within a few feet of the robber; (3) that he and Robert Williams immediately, and without being asked, offered to pursue the culprit; (4) that appellant was seen within moments of the robbery in the same alley where Edmonds had fled, walking a few feet ahead of him instead of following him to recover the purse; (5) that he and his companion turned to speak to Edmonds, who was then holding the purse hidden under a sweater; (6) that all three were seen by two witnesses together for a substantial period of time after the theft; (7) that appellant refused to stop when first requested to do so by Officer Rand and had to be ordered to come to a halt; and (8) that he was the only one of the three having any money in his possession when arrested—a ten-dollar bill, one of the few items missing from the complainant's purse when it was found. All this evidence, we submit, clearly indicates that appellant knowingly participated in the robbery and was an integral part of it. *United States* v.

Lumpkin, supra; United States v. *Harris, supra; Long* v. *United States, supra.*

CONCLUSION

WHEREFORE, it is respectfully submitted that the judgment of the District Court should be affirmed.

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